

EX PARTE OR LATE FILED

United States Senate

WASHINGTON, DC 20510-2603

August 12, 1998

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Ex Parte Filing

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

ORIGINAL

Re: In the Matter of the Pay Telephone Reclassification and Compensation Provisions
of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Ms. Salas:

An original and one copy of the attached letter to Chairman William E. Kennard are being submitted to you in compliance with 47 C.F.R. Section 1.1206(a)(2) to be included in the record in the above-referenced processing.

Respectfully submitted,



Erica Anderson
Office of Senator Burns

Attachment

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United States Senate

WASHINGTON, DC 20510-2603

August 11, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Kennard:

We are writing to express our deep concern that the Commission's decision to permit payphone providers to assess a 28.4 cent surcharge on all 800-number calls placed from payphones unfairly penalizes consumers, 800-service subscribers (including small businesses), non-profit organizations, government agencies, and the economy as a whole.

In passing Section 276 as part of the Telecommunications Act of 1996, Congress intended to promote the widespread deployment of payphones. Section 276 requires that payphone providers receive "fair compensation" for all calls made from payphones, including 800-number calls and other dial-around traffic, but it is also vital that the Commission ensure that the compensation mechanism treats all parties, including 800-number subscribers, fairly. The Commission has not met the critical goal of fairness to subscribers. A truly cost-based rate would be substantially lower - and eminently more reasonable - than the "market surrogate" adopted by the Commission.

Consumers, small and large businesses, non-profit organizations, and government agencies rely heavily on payphones. Many of these entities use 800-number services as an integral part of their everyday functions. For example, battered women shelters and runaway organizations employ 800-number hotlines to enable victims of domestic abuse to contact them in times of need. Federal and state agencies make available 800-number services as part of their benefits and food stamp programs. Transportation-related businesses, such as trucking companies and airlines, are often completely dependent on payphones to receive 800-number calls from drivers and the general public. Imposing a 28.4 cent surcharge on 800-number calls from payphones will raise the rates of these businesses and organizations, thereby threatening their ability to maintain their services at effective and efficient levels.

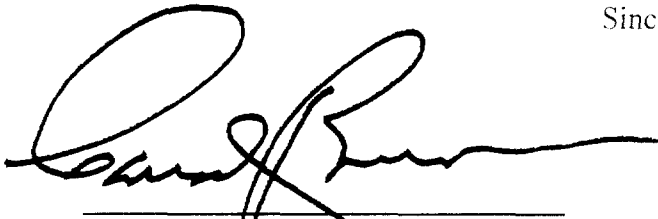
It is our understanding that the Commission's 28.4 cent rate is only an interim rate and that the problems faced by these organizations and agencies may be compounded once the payphone compensation rate is completely deregulated. The predication of the compensation mechanism on call blocking also raises serious questions, because many of these organizations, agencies, and

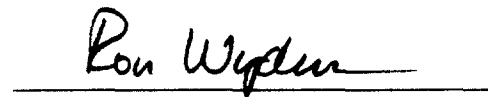
small businesses are reliant upon being able to be contacted from all phones, including payphones.

The FCC's decision on payphone compensation creates exorbitant and unjustified costs for a broad cross-section of the economy. This past May, the United States Court of Appeals for the D.C. Circuit determined that the FCC's explanation for the 28.4 cent surcharge was "plainly inadequate," and remanded the matter back to the agency. The Commission now has the opportunity and the obligation to remedy this problem by acting on the court's remand expeditiously. There is adequate evidence in the record to establish an appropriate cost-based rate, and it is my hope that the Commission will promptly use this approach to reduce significantly the rate for placing 800-number and other dial-around calls from payphones.

Finally, we strongly urge the FCC not to adopt the "calling party pays" approach advocated by some parties. This mechanism would do nothing to address the problem of locational monopolies for payphones or to ensure that the payphone rate for 800 calls is fair. Rather than shift the burden of the current inequitable rate directly on to consumers, the FCC should set a rate based on the legitimate costs of all payphone providers.

Sincerely,



Senator Conrad Burns

Senator Ron Wyden

cc: Hon. Susan Ness
Hon. Harold Furchtgott-Roth
Hon. Michael Powell
Hon. Gloria Tristani